

E-filed 9/6/11

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

TRIA BEAUTY, INC.,

No. C 10-5030 RS

Plaintiff,

**ORDER GRANTING MOTION
FOR LEAVE TO AMEND
COUNTERCLAIM**

v.

RADIANCY INC.,

Defendant.

Pursuant to Civil Local Rule 7-1(b), defendant Radiancy, Inc.'s motion for leave to file its First Amended Counterclaims is suitable for disposition without oral argument, and the hearing set for September 8, 2011 is vacated. Plaintiff has opposed the motion only to the extent it seeks to add an individual counter-defendant. Although adding a party may not be necessary to ensure Radiancy's ability to be compensated fully for any cognizable damages it has suffered, that is not a basis to preclude it from pursuing its claims against all persons who are potentially liable to it. Additionally, while the addition of a "celebrity spokesperson" as an individual defendant suggests at least the possibility of questionable tactical motives, there arguably is a legitimate interest in holding such persons responsible for the endorsements they choose to make. Even assuming the claims against the individual defendant may eventually be subject to dismissal at the pleading stage, at this juncture plaintiff has not shown them to be so without possible legal merit as to support a conclusion that the proposed amendment would be "futile," within the standards applicable under Rule 15 of the Federal Rules of Civil Procedure. As plaintiff has not otherwise established a basis

1 for denying leave to amend, the motion is granted. The First Amended Counterclaims submitted
2 with the motion are deemed filed as of the date of this order.

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4 IT IS SO ORDERED.

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6 Dated: September 6, 2011



RICHARD SEEBORG
UNITED STATES DISTRICT JUDGE